

BEFORE THE
Federal Communications Commission
 WASHINGTON, D.C. 20554

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 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)	
)	IB Docket No. 95-22
Market Entry and Regulation of)	RM-8355
Foreign-Affiliated Entities)	RM-8392

To: The Commission

COMMENTS OF TRW INC.

TRW Inc. ("TRW"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's rules, hereby comments on the Commission's Notice of Proposed Rulemaking^{1/} in the above-captioned proceeding.

TRW recently was authorized to construct, launch and operate a satellite system in the new Mobile Satellite Service Above 1 GHz ("MSS Above 1 GHz").^{2/} Because TRW's system and those of the other MSS Above 1 GHz licensees will provide voice and data telecommunications services on a global basis, TRW is vitally interested in the manner in which the Commission proposes to regulate access to the U.S. market by foreign-affiliated entities, and the implications of such regulatory efforts for market access by U.S. MSS Above 1 GHz systems abroad.

TRW strongly supports the Commission's stated goal of promoting effective competition in the global telecommunications market. TRW also supports the Commission's

^{1/} Market Entry and Regulation of Foreign-affiliated Entities, FCC 95-53 (released February 17, 1995) ("NPRM").

^{2/} See TRW Inc. (Order and Authorization), File Nos. 20-DSS-P-91(12), CSS-91-015, 17-SAT-LA-95, 18-SAT-AMEND-95 (DA 95-130) (released Jan. 31, 1995).

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determination that it will not apply its proposed market entry standard to mere financial participation in separate satellite systems or other non-common carrier facilities, as such activity presents no anti-competitive threat to U.S. carriers. TRW urges the Commission, however, to state clearly that, in considering any application by COMSAT Corporation ("Comsat") to provide common carrier service in the United States via the satellite system now known as "INMARSAT-P,"^{3/} it will treat the foreign carriers that own INMARSAT-P with Comsat as "affiliates" of Comsat for purposes of the market entry regulations to be adopted in this proceeding.^{4/}

I. The Commission Should Encourage Competition In Global Telecommunications.

In the NPRM, the Commission states that its primary goal in the instant rulemaking is to promote effective competition in the global telecommunications market.^{5/} In order to achieve that end, the Commission also seeks to prevent anticompetitive conduct in

^{3/} "INMARSAT-P" is the current designation of the entity that the International Maritime Satellite Organization ("Inmarsat") has established or will soon establish to provide global non-geostationary MSS services in competition with TRW and the other U.S. MSS above 1 GHz systems.

^{4/} While Comsat is currently the only known U.S. participant in INMARSAT-P, this situation could change. TRW's proposals herein regarding the treatment of an application by Comsat to provide common carrier service in the United States via INMARSAT-P should be extended to any U.S. entity which applies to provide common carrier service in the United States via INMARSAT-P and is also a financial participant in INMARSAT-P.

^{5/} NPRM, FCC 95-53, slip op. at ¶ 27.

the provision of international services or facilities, and to encourage foreign countries to open their communications markets.^{6/}

TRW emphatically supports the Commission's stated goals, which are essential not only to the health of the global telecommunications industry and to the United States economy, but also, more specifically, to the successful establishment and development of the new MSS Above 1 GHz market in which TRW will operate. The Commission correctly observes that "many important foreign communications services and facilities markets or market segments remain closed to U.S. competition, even while entities from those markets have entered or seek to enter similar U.S. markets."^{7/}

As the world's first truly global, voice-capable mobile satellite service, the MSS Above 1 GHz offers a variety of social and economic benefits to the United States and the world. In order to provide this global service, however, every MSS Above 1 GHz system will need to engage in extensive international regulatory coordination, to locate gateway earth stations on foreign soil, and otherwise to obtain access to the customer base of each foreign country. It is therefore critical that the Commission make every effort to encourage foreign countries to open their markets to U.S. MSS Above 1 GHz systems.

^{6/} Id. at ¶¶ 28, 31.

^{7/} Id. at ¶ 22.

II. The Commission Should Not Apply Its Market Entry Standard To Mere Financial Participation In Separate Systems And Other Non-Common Carriers.

TRW also supports the Commission's conclusion in the NPRM that it should not apply its proposed market entry standard to foreign carriers that merely participate as investors in separate satellite systems and other non-common carrier facilities.^{8/} The Commission is correct that the public interest would be served by its pursuit of a narrowly-tailored policy that requires only those foreign carriers that seek to enter the U.S. market in order to provide facilities-based international common carrier services to be subject to the market entry standard and associated restrictions proposed in the NPRM.^{9/} Mere financial participation by foreign carriers in separate satellite systems and other non-common carrier facilities poses no risk of competitive harm to U.S. carriers.

The Commission has recognized and endorsed the utility and desirability of such investment in the global U.S. MSS Above 1 GHz satellite systems.^{10/} The Commission has also acknowledged that foreign carrier participation will improve the likelihood that such systems will receive a grant of space station access by foreign

^{8/} See id. at ¶ 83. Nothing in this proceeding should be viewed as altering the permissibility of foreign entity participation in the ownership of non-common carrier facilities.

^{9/} See id.

^{10/} See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 6005 (1994) ("MSS Above 1 GHz Order").

administrations.^{11/} If the Commission were now to limit or condition foreign carrier participation in MSS Above 1 GHz systems based on the openness of each foreign entity's primary market to U.S. carriers, the result would not be greater market access for U.S. carriers abroad; rather, it would be the scaling back or even the withdrawal of foreign carriers from participation in U.S. MSS Above 1 GHz systems -- with a consequent loss of foreign market access and essential capital. Because the equity participation of foreign carriers in non-common carrier facilities by itself provides no ability to discriminate against U.S. carriers, the harm that the imposition of entry regulation would cause to U.S. MSS Above 1 GHz systems would be unnecessary, and thus would be contrary to the public interest in the rapid establishment of a healthy and competitive MSS Above 1 GHz.

III. The Commission Should Treat The Foreign Carrier Owners Of Inmarsat-P As Affiliates Of Comsat, And Therefore Subject To The Proposed Market Entry Requirements, For Purposes Of Any Application That Comsat Files For Authority To Provide Common Carrier Services Via INMARSAT-P.

In its NPRM, the Commission proposed to reserve to itself "the right to review any transaction that involves foreign carrier participation in which unique factors suggest Commission review would be necessary to serve the public interest, even with foreign carrier participation at levels below the investment threshold chosen."^{12/} TRW supports this proposal, and points out that the case of an application by Comsat (or subsidiary) to provide common carrier services in the United States via INMARSAT-P is one

^{11/} See id.

^{12/} NPRM, FCC 95-53, slip op. at ¶ 64.

area where the policies of this proceeding should apply -- even if the rules themselves may not.^{13/}

Cosat has already pledged its financial support for INMARSAT-P, as have numerous foreign carriers that, like Cosat, are signatories to Inmarsat.^{14/} By dint of their investments, these foreign carriers have a direct incentive to exploit their control over their primary markets in order to discriminate against the U.S. MSS Above 1 GHz systems with which INMARSAT-P will compete. Cosat's substantial equity participation in INMARSAT-P gives it a common interest with these foreign carriers in imposing market entry barriers and other such hurdles upon systems that will compete with Inmarsat-P, even as its own Section 214 application would ostensibly provide access for the foreign carriers to the U.S. market.^{15/}

^{13/} See supra n.4.

^{14/} As contemplated by Inmarsat, INMARSAT-P would be a global, handheld telephone service that would compete directly with U.S. global MSS Above 1 GHz systems. It is to be structured as a corporation, distinct, at least in form, from the Inmarsat organization. Despite the ostensibly "separate" form of INMARSAT-P, however, Inmarsat and its offshoot are expected to enter into contracts under which Inmarsat will provide technical support, management and other services, and serve as the exclusive wholesaler of certain maritime and aeronautical services provided through INMARSAT-P. See Participation by COMSAT Corporation in a New Inmarsat Satellite System Designed to Provide Service to Handheld Communications Devices, File No. ISP-95-003 (DA 95-31) (January 10, 1995), slip op. at ¶ 4.

^{15/} Cosat and numerous foreign carriers that are signatories to Inmarsat have already made substantial financial commitments to INMARSAT-P, and Cosat's commitment outstrips that of any other party. In an initial investment round that concluded on January 20, 1995, 38 signatories or authorized entities from Inmarsat's 76 member nations invested directly in INMARSAT-P. Cosat became the largest
(continued...)

The relationship between Comsat and the foreign carriers in INMARSAT-P -- particularly the fact that Comsat would supply or arrange for the system's access to the U.S. market -- makes possible precisely the kinds of abuses that the Commission's market entry standard was designed to prevent. The foreign carriers that will provide INMARSAT-P with financial support will seek, via Comsat, to enter the U.S. market to provide international, facilities-based common carrier service,^{16/} and their financial stakes will give them a powerful incentive to exploit the facilities that they themselves control in their primary markets to promote Inmarsat-P service over competing international services such as those provided by U.S. MSS Above 1 GHz systems. However, as Comsat is not controlled by a foreign carrier, and no foreign carrier has a stake in Comsat that is likely to exceed the investment threshold to be chosen in this proceeding as a trigger for entry regulation, Comsat's Section 214 application regarding INMARSAT-P will likely evade the regulatory aims of this proceeding unless the Commission steps in.

^{15/}(...continued)

single shareholder, investing \$94 million and taking a 6.7% share. Comsat also invested \$20 million indirectly via its wholly-owned subsidiary, Comsat Argentina. In addition, Comsat is responsible for providing approximately \$33 million of Inmarsat's separate \$150 million investment in INMARSAT-P. See TR International (Feb. 3, 1995) at 5.

^{16/} Comsat's major financial stake in INMARSAT-P gives it every reason to provide foreign carriers with the access they need to the U.S. market on the most favorable possible terms. Given Comsat's exclusive status as the U.S. signatory to Inmarsat, the potential certainly exists for it to cross-subsidize its service offerings to foreign carriers seeking access to the U.S. market in order to attract their business. Such activity would cause competitive harm to U.S. service providers that have no such artificial advantages.

The Commission states in the NPRM that it seeks to "eliminate opportunities for foreign entities to engage in conduct that might have anticompetitive effects in the provision of international services or facilities, including undue discrimination or other abuses of bottleneck facilities..."^{17/} The potential for the abuse of foreign market power that is inherent in Comsat's relationship with the foreign carriers that will participate in the INMARSAT-P is exactly what the Commission's market entry standard was designed to prevent. The Commission should therefore pursue its policy goals pragmatically by evaluating any application by Comsat to provide Inmarsat-P service within the United States under its market entry standards, just as if it were filed by an "affiliate" of a foreign carrier.

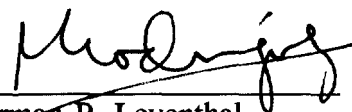
^{17/} NPRM, FCC 95-53, slip op. at ¶ 33.

V. Conclusion

For the foregoing reasons, TRW supports the Commission's pursuit of its stated goal of encouraging competition in global telecommunications. The Commission should not apply its proposed market entry standard to foreign carriers that merely participate financially in separate satellite systems or other non-common carrier facilities, and should clarify that it will treat the foreign carrier co-owners of INMARSAT-P as "affiliates" of Comsat for purposes of any Section 214 application the latter files to provide Inmarsat-P service in the United States.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Christopher A. Robles, hereby certify that a true and correct copy of the foregoing
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